Supreme Court, U.S.
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No. 04-565

In The
Supreme Court of the United States

FREDERICK EDWARDS,

Petitioner,

v.

BARTON PROTECTIVE SERVICES, INC., and FRANKIE MATHIS-SALAMY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the District of Columbia Court of Appeals' failure to accurately state or apply the controlling law in any way is a ground to remand a case to the lower court to review the error in the interests of justice.

2. Whether the District of Columbia Court of Appeals' failure to accurately state controlling law denies a party due process.

3. Whether the court of appeals erred by not addressing the law and by summarily dismissing Petitioner's allegations that he lost his job and reputation when Respondent made false accusations that he grabbed her, pulled her breasts to him and bit her on the neck when those accusations were made in retaliation for Petitioner reporting security breaches caused by Respondent.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review and remand the judgment of the District of Columbia Court of Appeals for further consideration.

OPINIONS BELOW

On June 14, 2001 the Superior Court of the District of Columbia granted Respondents' motion for summary judgment dismissing Petitioner's claims. (Appendix ("Pet. App.") 13a). On July 28, 2004 the District of Columbia Court of Appeals affirmed (Pet. App. 1a - 12a).

STATEMENT OF JURISDICTION

Jurisdiction in the Superior Court of the District of Columbia was based on the location of the acts involved and the place of business of the respondents pursuant to D.C. Code § 11-921 (1981 Edition). The District of Columbia Court of Appeals entered its order affirming the opinion of the Superior Court of the District of Columbia on July 28, 2004. Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

There are no statutory provisions involved in this case.

STATEMENT OF THE CASE

This case unfolds a tragic and almost unimaginable tale involving Mr. Frederick Edwards ("Petitioner") who had his job, health, livelihood and reputation taken from him. All of this occurred when Petitioner reported to his superiors at The John Akridge Company ("Akridge") that Ms. Frankie Mathis-Salamy ("Mathis-Salamy" or "Respondent") caused a breach in security at the building where Petitioner worked. Mathis-Salamy worked for Barton Protective Services, Inc. ("Barton" or "Respondent"), a security firm that was contracted to protect the inhabitants of the building including Petitioner. Three days later, Mathis-Salamy retaliated charging that Petitioner grabbed her from behind on the morning of the security breach, bit her on the neck and pulled her breasts to his chest. Petitioner is African-American and Mathis-Salamy is white woman. These malicious lies destroyed this man in every conceivable sense of the word.

Petitioner's supervisor who was a friend of Mathis-Salamy leaked the allegations to co-workers. An investigation came up with no proof that Petitioner sexually assaulted Mathis-Salamy. Notwithstanding, Petitioner's employer refused to clear his name, treated his suspension as a disciplinary matter and relocated him to another building. After being alienated from and ostracized by his co-workers, Petitioner sunk into a depression and informed his supervisor that he had found another job. Two days later he was fired allegedly because new allegations of sexual harassment arose. However, Petitioner was not identified by the

accusers, the names of the alleged victims never surfaced during the litigation and Edwards was never asked his version of events. More suspect was that the report of the new allegations was generated a year later after suit was filed. Petitioner's termination letter referenced the allegations by Mathis-Salamy as the main reason for the termination without an investigation. Petitioner claims that the second allegations were fabricated to destroy him and neutralize him as a future threat to respondents.

Respondents moved for summary judgment as to Petitioner's claim of intentional infliction of emotional distress. The Superior Court for the District of Columbia dismissed the case. The reason why this tort case finds itself in this Court is that the District of Columbia Court of Appeals applied law that did not apply to the facts presented. It held that disputes involving employer/employee disputes require a heightened level of outrage to state a claim for intentional infliction of emotional distress. The problem is that Mathis-Salamy was not Petitioner's supervisor or even his co-worker. She worked for a separate entity that was contracted to protect the inhabitants of the building.

Then the court completely ignored and refused to address in any way the applicable law which it had clearly enunciated in a recent decision. The court of appeals had held that false allegations when fueled by motive of retaliation states a claim for intentional infliction of emotional distress. This is true even in the employment context assuming arguendo that that was the case here. In other words, the court of appeals only

stated half of the law and in doing so misstated the law.

This error in all probability resulted from the case sitting on the docket of the court of appeals from June 14, 2001 until July 28, 2004 when a decision was finally handed down. After conducting a hearing and after all briefs and documents had been submitted, the court of appeals took two years to render a decision. It is also possible that the court of appeals confused the parties believing that Mathis-Salamy was hired by Petitioner's employer. Petitioner does not request that this Court review, determine or apply the law of the District of Columbia. Rather, Petitioner only seeks the remanding of the case to the court of appeals so that it can review its decision in light of the applicable law which it ignored. If this Court does wish to review this case, petitioner requests that this court determine whether the failure to accurately state relevant law by a state court denies a plaintiff due process.

If this case is not sent back to the Court of Appeals to correct this error a grave injustice will occur – a good man with an exemplary employment record will forever be smeared by incendiary, false and malicious allegations that he sexually assaulted a woman at ~~work~~ and that he sexually harassed a man. This is the "compelling" reason this case should be remanded to the court of appeals. This country and this Court cherishes the value of a single individual life. One man matters and that man's name and livelihood should not be discarded by a mistake by the highest court in the District of Columbia.

FACTS

Petitioner worked as a porter for Akridge, a building maintenance company. Petitioner received numerous written commendations from tenants in the building where he worked (the "Building"). He received "superior" evaluations and Akridge presented him with the 1996 Special Recognition Award". Petitioner wrote in his self-evaluation report:

> "I would like you to know how much I appreciated working with the John Akridge Company and would love to go on and someday become an engineer for the Company and know that it will take some schooling and I am willing to give it try if given a chance. Thank you sincerely, Frederick Edwards."

Petitioner got along with all his supervisors except Mary Alice O'Halloran ("O'Halloran") who berated him, pounded her fists on his chest while yelling obscenities at him behind closed doors and degraded him repeatedly. O'Halloran had her sexual advances rebuffed by Petitioner.

On April 24-25, 1999, Washington D.C. hosted the NATO 50th anniversary summit. In preparation, Akridge made special arrangements to have their security contractor, Barton, provide 24-hour security at the Building. Foreign dignitaries often visit the Building. Mathis Salamy was in charge of scheduling security guards for Barton at the Building.

Petitioner arrived at 4:30 a.m. at the Building on the day the extra security measures were to take affect. He found no guard on duty. Mathis-Salamy caused the security breach because she had advanced warning that the regularly scheduled guard was not able to make the shift. Petitioner immediately called Mathis-Salamy who came to the Building. She asked what Petitioner was going to do about the problem. Petitioner claimed he would have to tell Akridge. Petitioner added that Barton would probably lose their contract because there had been numerous breaches. Mathis-Salamy suggested Petitioner tell O'Halloran who was her friend. Petitioner refused and, in front of Mathis-Salamy, he told a Vice President of the security breach. (Petitioner had made other complaints about the security to O'Halloran and no action had been taken.)

Later that day Mathis-Salamy traded e-mail with O'Halloran who did not show up for work. Mathis-Salamy alleged three days later that on the morning in question Petitioner "grabbed me and pulled my breasts into his chest and bit me on the neck." A parking attendant disputed Mathis-Salamy's version of events. [1] In a different version of the events Mathis-Salamy added that Edwards grabbed her stating, "I want to kiss those beautiful lips." There was no mark on her neck or other corroborating evidence.

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[1] Mathis-Salamy claimed that Petitioner assaulted her in an elevator when the two were going down to the garage to speak with the parking attendant. Petitioner and the parking attendant, however, claimed that the two walked out the front door in plain view and around the side of the Building to see him. Mathis-Salamy was lying. There was no witness or other evidence to support any of Mathis-Salamy's claims.

Petitioner was suspended from his job pending an investigation. During this time O'Halloran spread the defamatory allegations to Petitioner's co-workers breaching the company's confidentiality policy. Barton conducted no investigation into Petitioner's allegations that their employee had lied about the story in retaliation for Petitioner exposing the security breach. Akridge conducted an investigation concluding that they were ". . . unable to make any conclusive determination that [Petitioner] did not commit any such act." Akridge relocated Petitioner giving him one "last chance", treated his suspension as a disciplinary suspension and placed the report in his personnel file.

The allegation of the sexual assault spread to Petitioner's co-workers at the new location. Petitioner felt alienated, depressed and ostracized. Petitioner was especially tormented because the charges came from a white woman. Petitioner informed a supervisor that he could not bear to work for Akridge under the circumstances and would be leaving. A few days later Edwards was called into the supervisor's office, informed that new allegations of sexual harassment had been made and that Akridge "believed" that the allegations involved Petitioner. Petitioner was immediately terminated without being told anything about the allegations, the accusers and without giving his version of the events. During discovery in the subsequent lawsuit, none of the Defendants either could or would produce the names of the accusers. Consequently, neither accuser could be deposed.

The report memorializing the second set of allegations was generated over one year after the

alleged incident occurred and after litigation had begun. The accusers did not identify the race of the alleged perpetrator and did not identify Petitioner. Moreover, Petitioner was working with a co-worker the entire morning when the alleged harassment occurred. That co-worker never saw Petitioner leave his job, harass anyone or "follow" the alleged victim into the building. (The court of appeals cited a "report" that alleged that Petitioner "followed [the alleged victim] toward the building." (Pet. App. 5a)) This was just one of the material facts in dispute. Under oath, Petitioner stated that a white man approached him that day, threw a cigarette but near him at which time Petitioner asked him to pick it up. The was no other interaction. In the letter of termination, Akridge referenced Mathis-Salamy's allegations as the reason for the termination without an investigation.

As a result of the actions of Mathis-Salamy, Petitioner suffered nightmares, cold sweats, a breakup with his girlfriend of two-years and lost trust in people. The forensic psychologist who evaluated Petitioner concluded,

> "The results of the psychological testing supported his claim of moderate to severe symptoms of psychological distress, including hypervigilance, problems with confusion and concentration, feelings of social alienation, depression, and anxiety."

REASONS FOR GRANTING WRIT

Review on a writ is a matter of judicial discretion. Sup. Ct. R. 10. The "essence of certiorari jurisdiction" is whether there is a "compelling reason" for granting it. 23 Moore's Federal Practice, HR. 510.05. The federal question presented here is a constitutional one of fundamental due process. However, the Rule adds that the list is "neither controlling nor fully measuring the Court's discretion." Sup. Ct. Rule 10. "Rigidity has been eschewed." 23 Moore's Federal Practice, HR 510.06.

Rule 10 continues that a petition will rarely be granted when the petition involves erroneous factual findings or the misapplication of a properly stated rule of law. Here the court did not properly state the rule of law. As a result it did not apply or misapply it.

A concern of the Supreme Court in refusing to review state law questions is that federalist principles encouraging states' "sovereignity" would be undermined. This principle, however, is not thwarted here. All petitioner seeks is the remanding of the case so that the Court of Appeals can review the case to see if applicable law was ignored or misstated. Petitioner does not ask this court to determine or apply an area of state law for the District of Columbia. In the alternative, Petitioner asks this Court to review whether due process was discarded by the Court of Appeals.

I. THE COURT OF APPEALS IMPROPERLY APPLIED LAW GOVERNING CLAIMS MADE BY EMPLOYEES THAT HIS OR HER SUPERVISOR WAS LIABLE FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

As mentioned, Petitioner worked for Akridge which managed commercial real estate. Mathis-Salamy was a security supervisor for Barton. Barton was an independent contractor to Akridge to provide security. There was no other affiliation between Akridge and Barton or between Petitioner and Mathis-Salamy. These relationships must have been lost on the court of appeals because all of the cases it applied related to employer/employee disputes. Early in the opinion the court acknowledged that Salamy worked for Barton. (Pet. App. 2a) However, later in the opinion the court made the following statement:

> "[Petitioner] contends that the trial court erred as a matter of law in granting appellees summary judgment because Mathis-Salamy's retaliatory motive is sufficient to support a claim of intentional infliction of emotional distress; that Akridge did not carry out a proper investigation into the allegations; that Barton is vicariously liable under the doctrine of respondeat superior for its employee's retaliatory charges; **that a special relationship existed between Edwards and Mathis-Salamy because she was hired by Akridge** [emphasis added]. . ." (Pet. App. 7a)

Perhaps the court became confused about the identity of the parties because Petitioner never suggested that Mathis-Salamy was hired by Akridge. To underscore its potential confusion, the court of appeals then applied law that related exclusively to conflicts between an employer and employee. The court cited the following: "*See Paul, supra,* 754 A.2d at 307; see also *Duncan v. Children's Nat'l Med. Ctr.*, 702 A.2d 207, 211-12 (D.C. 1997)(stating that "generally, employer-employee conflicts do not rise to the level of outrageous conduct.")." (Pet. App. 9a). Outrageous conduct is required to sustain a claim of intentional infliction of emotional distress. [2] *Paul v. Howard University,* 754 A.2d 297 (D.C. 2000) involved claims by an associate professor against administrators at the college where she worked. *Duncan* involved claims by a pregnant radiologist against supervisors at a hospital where they worked. None of the cases cited involved allegations made by an employee against an individual who did not work for the same entity as the employee.

The courts clearly allow a supervisor substantial leeway in supervising and controlling the actions of a subordinate while at work. There is inevitable give and take in that relationship where boundaries of responsibilities and authority constantly collide. This is why a heightened level of outrage must be present in such contexts. That standard has never been applied to other types of relationships and Respondents produced

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[2] The elements of an intentional infliction of emotional distress claim in the District of Columbia are (1) extreme and outrageous conduct; (2) which intentionally or recklessly; (3) causes the plaintiff severe emotional distress. *Waldon v. Covington,* 415 A.2d 1070, 1076 (D.C.App 1980).

no law extending it to facts presented here. Similarly, all of the other cases cited by the court of appeals involve suits by employees against their supervisor. [3]

The court of appeals found the case of *Kerrigan v. Britches of Georgetowne, Inc.*, 705 A.2d 624, 626 (D.C. 1997) "analogous" to the facts presented here. (Pet. App. 10a). In *Kerrigan*, plaintiff's supervisor continued an investigation of sexual harassment and manufactured evidence against him after plaintiff had been exonerated. She did this for the sole reason that she did not like plaintiff. These facts are not analogous to those presented here. First, Mathis-Salamy was not Petitioner's supervisor. She was hired by Barton to protect him. Moreover, Petitioner claims that Mathis-Salamy manufactured allegations in retaliation for Petitioner blowing the whistle on her repeatedly causing breaches in security. The supervisor in *Kerrigan* did not retaliate against plaintiff for anything he did to her. She just did not like him. As such there was no allegation of retaliatory conduct. This is a pivotol distinction under the law.

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[3] *Crowley v. North Am. Telecomm. Assoc.*, 691 A.2d 1169, 1171 (D.C.1997)(where an employee sued his employer over a discharge relating to an unwarranted evaluation); *Walden v. Covington*, 415 A.2d 1070, 1076 (D.C. 1980)(where a professor sued his supervisor for taking adverse employment actions against him); *Howard University v. Best*, 484 A.2d 958, 985 (D.C. 1984)(facts alleged were sufficient to allow the claim to proceed where an employee alleged that her supervisor touched her, made vulgar comments to others about her and then tried to fire her after she rejected his sexual advances); *Cooke-Seals v. District of Columbia*, 973 F. Supp. 184, 188 (D.D.C. 1997)(involving allegations of abuse of supervisory power).

II. ASSUMING THAT MATHIS-SALAMY'S ACCUSATIONS OF SEXUAL ASSAULT OCCURRED IN AN "EMPLOYMENT CONTEXT" THE COURT OF APPEALS FAILED TO ACCURATELY STATE THE LAW IN CASES OF RETALIATORY CONDUCT

Petitioner does not believe the accusations of sexual assault occurred in the employment context because Mathis-Salamy did not work with nor did she supervise Petitioner. However, the court of appeals held the following, "Not only is the outrageousness prong difficult to meet, but we have also been exacting as to the proof required to sustain such claims in the employment context." *See Paul, supra,* 754 A.2d 207, 211-212 (D.C. 1997). Assuming arguendo that the accusations arose in the employment context, the court of appeals still did not accurately state the law. The law carves out an exception to the general rule that conflicts between an employee and an employer normally do not rise to the level of outrageous conduct required by the claim. That exception is where the conduct complained of is fueled by a retaliatory motive.

The court of appeals acknowledged that Petitioner's appeal hinged on the allegation that Mathis-Salamy's retaliatory motive is sufficient to support a claim of intentional infliction of emotional distress. (Pet. App. 7a). The problem is that it neither addressed that central legal argument nor did it accurately recite the law regarding retaliatory motive as set forth in Petitioner's brief and oral argument. The

court of appeals never stated that a retaliatory motive would constitute outrageous conduct even in an employment context. If it had stated this law and mistakenly distinguished that law from the facts presented, there would have been little reason to seek a remand of the case.

The court of appeals itself even highlighted this deficiency in the opinion upon which it principally relies. In *Kerrigan* the court of appeals distinguished the facts presented there where no retaliatory motive was present from the facts presented in *Kidd v. King*, 640 A.2d 656 (D.C.App. 1993), where a retaliatory motive was present. In *Kidd*, one of the co-defendants furthered the harasser's scheme to retaliate against the plaintiff for her filing a grievance against the harasser. *Id.* at 670. In regards to this defendant, the court of appeals held, "Such retaliatory conduct, like sexual harassment itself, as we held in Best I, is 'so extreme and outrageous as to permit recovery.'" *Id.* at 673, citing *Howard University*, 484 A.2d at 986. The other co-defendant merely conducted an improper investigation which was not sufficiently outrageous to sustain the claim. In other words, the very court of appeals that dismissed Petitioner's claim concluded that conduct fueled by a retaliatory motive was sufficiently outrageous to state a claim for intentional infliction of emotional distress. This law was specifically laid out before both lower courts by Petitioner and the trial court and the court of appeals not only failed to follow it but did not even state it as law and discuss why it was inapplicable. This is a denial of fundamental due process.

III. THE COURT OF APPEALS' FAILURE TO ADDRESS OR APPLY THE LAW CONSTITUTED A DENIAL OF LIBERTY WITHOUT DUE PROCESS AS GUARANTEED BY THE FOURTEENTH AMENDMENT

Certiorari may be granted to review a state court decision where a title, right, privilege or immunity is specially set up or claimed under the United States Constitution. 28 U.S.C.A. § 1257(3). Generally, the fourteenth amendment protects individuals against the deprivation of liberty or property without due process. The issue becomes whether the right to be adjudged according to accurately stated law is such a "basic and fundamental" right so rooted in the traditions and conscience of our people as to be guaranteed by the due process clause. *See Rochin v. People of Cal.*, 342 U.S. 165 (1952). Petitioner believes it is.

This is the expansive meaning given to the right to liberty and property. Such rights, also termed "civil liberties", include all rights which courts must enforce because they are basic to a free society. *Wolf v. People v. People of the State of Colo.*, 338 U.S. 25 (1949). Civil liberties protected under the due process clause of the fourteenth amendment are those rights that imply the existence of an organized orderly society without which liberty itself would be lost in the excesses of unrestrained abuses. *Cox v. State of New Hampshire*, 312 U.S. 569 (1941).

If courts were allowed to inaccurately state or ignore the law, liberty would certainly be lost in the

excesses of "unrestrained abuses." Courts would become legislators and the citizenry would become prisoners to the whims of judges. The question then becomes whether Petitioner was deprived of liberty. This Court has held that liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that a citizen shall be protected in the right to use his powers of mind and body in any lawful calling. *Smith v. Texas*, 233 U.S. 630 (1914).

By dismissing Petitioner's claim without applying prevailing and relevant law, the court of appeals denied him the opportunity to defend his name. Since disciplinary action was taken against him based on malicious lies ultimately resulting in his termination Edwards' was deprived of his ability to use his powers of mind and body in a lawful calling. In other words, Mr. Edwards cannot find a job with the record generated by Respondents. The very least this system owes its citizens is to accurately recite the law especially where a court's preemptory decision robs him of his right to a jury trial.

CONCLUSION

Petitioner was falsely accused of biting a woman on the neck. Then he was discarded amidst new fabrications once it became clear he would not lie down and accept the sad and despicable turn in his life.

Petitioner respectfully requests that this case be remanded so the court of appeals can review the law regarding retaliatory conduct in an employment

context and determine whether it appropriately applied *Kerrigan* and whether it improperly ignored the controlling law as set forth *King*. This decision cannot stand. A man's life hangs in the balance.

Respectfully submitted,

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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 01-CV-926

FREDERICK EDWARDS, APPELLANT,

v. (003365)

BARTON PROTECTIVE SERVICES, INC., *et al.*, APPELLEES.

Appeal from the Superior Court of the
District of Columbia
Civil Division

(Hon. Linda D. Turner, Trial Judge)

(Argued June 12, 2002 Decided July 28, 2004)

Before WAGNER, *Chief Judge*, STEADMAN and WASHINGTON, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

Appellant, Frederick Edwards, appeals the trial court's grant of summary judgment in favor of appellees, arguing that there were issues of material fact as to his intentional infliction of emotional distress claim. In his complaint, Edwards alleged that appellee, Frankie Mathis-Salamy, retaliated against him for reporting her security breach at the building where, he was employed as a porter by accusing him of sexually harassing her, and that this retaliation and its consequences support a claim for intentional infliction of emotional distress. Edwards' former employer, The

John Akridge Company (Akridge), is implicated in the claim based on its handling of the investigation regarding the sexual harassment charges and its refusal to clear Edwards' name, while Barton Protective Services (Barton), the employer of the allegedly retaliating employee, is named based on the theory of respondent superior. In a June 12, 2001 oral ruling, the trial court granted appellees' motion for summary judgment, concluding that, taking Edwards' allegations as true, appellees' conduct did not rise to the level of extreme and outrageous conduct required to support a claim of intentional infliction of emotional distress. We affirm.

I

In January 1996, Edwards was employed as a porter for Akridge, a private company that provides commercial property management services at office buildings in the Washington, D.C. area. When first employed, Edwards worked at the 1225 I Street, N.W. location. In 1997, Edwards began working at a property that Akridge managed at 1800 K Street, N.W. Edwards' supervisor at Akridge was Mary Alice O'Halloran, who Edwards argues berated, abused and, on one occasion, assaulted him. According to Edwards, O'Halloran asked him out on dates,[1] which he refused, and he "felt afraid and threatened by her overtures," given her abusive treatment of him. He complained to several Akridge officials about her abuse, but the abuse continued.

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[1] Edwards testified that O'Halloran actually invited him out once to a happy hour.

Appellee, Frankie Mathis-Salamy, was employed as a security guard supervisor by Barton, a subcontractor responsible for providing security services at the 1800 K Street building. Mathis-Salamy was responsible for scheduling and monitoring security at the building. On the morning of April 23, 1999, Edwards arrived at work at 4:30 a.m. to find that no security guard had been posted by Barton at the building despite the fact that Akridge had made special security arrangements with Barton to provide 24-hour security coverage at the building on that weekend in light of the scheduled NATO 50th anniversary summit. Edwards alleges that Mathis-Salamy caused the security breach because she was aware that the regularly scheduled guard would not be reporting to work, and she failed to schedule a replacement. When Mathis-Salamy arrived at the building and asked Edwards what he intended to do about the incident, Edwards informed her that he was required to report security problems, and that Barton would probably lose their contract with Akridge as a result. Mathis-Salamy suggested that he report the problem to O'Halloran, her friend. Edwards decided against this course of action because he had previously reported security breaches to O'Halloran, and she had not responded. Instead, Edwards reported the incident to the Akridge Vice-President. Edwards alleges that Mathis-Salamy then spoke to O'Halloran. On April 26, 1999, Mathis-Salamy informed her supervisors at Barton that Edwards had assaulted her in an elevator of the building by grabbing her, pulling her breasts to his chest and biting her on the neck.

After receiving this report, Barton's Vice-President, Todd Carroll, informed Akridge about Mathis-Salamy's allegations. On April 26, 1999, Akridge informed Edmonds that pursuant to their policies with respect to reports of sexual harassment, Edwards would be suspended with pay until an investigation was completed. Upon completion of its investigation, Akridge informed Edwards in a May 12, 1999 memorandum that "there were a few troubling inconsistencies" between his version of the incident and that of Mathis-Salamy, and that the company had "serious concerns" that Edwards was "not completely forthright during the investigation." However, Akridge indicated that the company was "unable to conclude from. our investigation that you committed any acts in violation of our policy." Although allowing Edwards to return to work, Akridge decided that "out of an abundance of caution" Edwards would be re-assigned to another building and the suspension during the investigation would be treated as a disciplinary suspension with respect to his personnel record. The May 12, 1999 memorandum also included various expectations as to Edwards' future conduct, including "[h]av[ing] all dealings with co-workers and others with whom you come into contact during work to be on a professional basis;" "[e]nsur[ing] that all discussions of non-business matters with others are appropriate and inoffensive;" "[a]voiding sexual innuendoes or comments;" and "refraining from any touching of any other individual unless there is a legitimate job-related reason for contact."

Akridge refused Edwards' request to have the disciplinary letter removed from his personnel file.

Edwards alleges that O'Halloran then spread rumors concerning the allegations in violation of a letter of confidentiality, which Akridge had asked Edwards to sign. Edwards claimed that he was "devastated" by the allegations, and felt alienated from his co-workers. Moreover, his relocation to another Akridge building made him appear guilty in the eyes of his co-workers. When he realized that the accusations had followed him to the new building and that co-workers were gossiping that he had sexually attacked a woman, Edwards decided to leave Akridge. On July 22, 1999, he was terminated when new allegations were made, that he propositioned a male subcontract employee while working at the building to which he had been reassigned.[2]

Edwards maintains that after Mathis-Salamy's retaliatory charges and the unsatisfactory investigation, he experienced severe headaches, problems sleeping, nightmares, weight loss and felt he could no longer trust others. In addition, he felt depressed, lonely and angry. He developed relationship problems, and broke up with his girlfriend of two years. He said that, as an African-American man, he felt especially traumatized by the fact that he was being falsely accused of

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[2] The record indicates that the subcontract employee informed Akridge that Edwards accosted him while he was arriving for work, asked him if he was gay, followed him toward the building, and then asked if he wanted to perform sexual acts. The subcontract employee attempted to ignore the comments. Edwards then allegedly followed the man, into the building and onto the elevator where Edwards allegedly asked him if he would like to get off the elevator and go into a stairwell so that Edwards could provide him with sexual favors. When confronted with this incident, Edwards denied that it had ever occurred.

attacking a Caucasian woman, particularly in view of the fact that he chose to date only women of African American descent.

On April 27, 2000, Edwards filed an eight-count complaint against Akridge, O'Halloran, Mathis-Salamy, and Barton and others[3], alleging defamation, fraudulent misrepresentation, negligence, breach of contract, intentional and negligent infliction of emotional distress, racial discrimination in violation of the District of Columbia Human Rights Act, negligent supervision, and wrongful termination. On October 4, 2000, Edwards filed a Second Amended Complaint, which alleged only three counts - the infliction of emotional distress claims, racial discrimination in violation of the District of Columbia Human Rights Act, and wrongful termination. Subsequently, Edwards moved to dismiss all the claims with the exception of intentional infliction of emotional distress.

On April 20, 2001, Akridge and O'Halloran as well as Barton and Mathis-Salamy filed separate motions for summary judgment, requesting the dismissal of appellant's extant intentional infliction of emotional distress claim. On June 14, 2001, while deciding to take O'Halloran's motion under advisement, the trial court granted the motion with respect to Akridge, Barton, and Mathis-Salamy,

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[3] The other named defendants were John Akridge, President and owner of Akridge; Donald Tenant, a senior manager for Akridge; and Frankie Solomon, an employee of Barton. Claims against these named defendants were apparently dropped when Edwards first amended his complaint. However, Edwards' First Amendment Complaint is not part of the record on appeal.

concluding that taking Edwards' allegations as true, "the conduct does not rise to the level of conduct so outrageous and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, utterly intolerable . . . in a civilized society." Subsequently, Edwards voluntarily dismissed the action as to O'Halloran and chose not to appeal the trial court's grant of summary judgment to Akridge. However, on July 9, 2001, Edwards appealed the trial court's rulings with respect to Barton and Mathis-Salamy.

II

Edwards argues that his job, health and reputation were compromised as a result of the retaliatory sexual harassment charges lodged by Mathis-Salamy. He contends that the trial court erred as a matter of law in granting appellees summary judgment because Mathis-Salamy's retaliatory motive is sufficient to support a claim of intentional infliction of emotional distress; that Akridge did not carry out a proper investigation into the allegations; that Barton is vicariously liable under the doctrine of respondeat superior for its employee's retaliatory charges; that a special relationship existed between Edwards and Mathis-Salamy because she was hired by Akridge, which "lowers the requisite level of outrage required to survive" summary judgment; and that Edwards' "inherent sensitivities" based on his race and gender should have been taken into account by the trial count in assessing the outrageousness of Mathis-Salamy's conduct.

In reviewing an appeal from a summary judgment ruling, "we view the record in the light most favorable to the non-moving party, giving to that party the benefit of 'all favorable inferences that can be drawn from the evidence.'" *Paul v. Howard Univ.*, 754 A.2d 297, 305 (D.C. 2000) (citing *Holland v. Hannan*, 456 A.2d 807, 815 (D.C. 1983)). We will affirm the trial court's decision if the record establishes that "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Kerrigan v. Britches of Georgetowne, Inc.*, 705 A.2d 624, 626 (D.C. 1997) (citation and internal quotation marks omitted). The principal question on appeal, then, is whether, taking Edwards' allegations of retaliation as true and drawing all reasonable inferences from the record in his favor, the conduct of appellees rises to the level of being so extreme' and outrageous to entitle Edwards to bring his claims of intentional infliction of emotional distress to a jury. We conclude that Edwards' allegations do not support such a claim.

Establishing a prima facie case of intentional infliction of emotional distress requires a showing of "(1) 'extreme and outrageous' conduct on the part of the defendant[s], which (2) intentionally or recklessly (3) causes the plaintiff 'severe emotional distress.' *Paul, supra*, 754 A.2d at 307; *See also Kerrigan, supra*, 705 A.2d at 628. The conduct alleged must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." *Kerrigan, supra*, 705 A.2d at 628; *see also Paul, supra*, 754 A.2d at 307-08. A claim based on "mere insults,

indignities, threats, annoyances, petty oppressions, or other trivialities" is insufficient to meet the requirements of "extreme and outrageous" conduct. *Crowley v. North Am. Telecomm. Assoc.*, 691 A.2d 1169, 1171 (D.C. 1997) *(citing Walden v. Covington,* 415 A.2d 1070, 1076 (D.C. 1980)).

A case should go to the jury only if "reasonable people could differ on whether the conduct is extreme and outrageous." *Howard Univ. v. Best,* 484 A.2d 958, 985 (D.C. 1984) (citation omitted). Not only is the outrageousness prong difficult to meet, but we have also been exacting as to the proof required to sustain such claims in the employment context. *See Paul, supra,* 754 A.2d at 307; *see also Duncan v. Children's Nat'l Med. Ctr.,* 702 A.2d 207, 211-12 (D.C. 1997) (stating that "generally, employer-employee conflicts do not rise to the level of outrageous conduct.").

Taking Edwards' allegations as true, we conclude that the conduct of Akridge and Barton in investigating Mathis-Salamy's complaint against Edwards for sexual harassment does not constitute extreme and outrageous conduct. Even in the event that Akridge was not thorough in investigating the allegations, clearing Edwards' name, and in removing the disciplinary report from Edwards' file, such conduct would not rise to extreme and outrageous conduct.[4] *See*

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[4] Edwards intimates that Barton should have carried out its own investigation rather than merely cooperating with Akridge in their investigation. However, the record indicates that it was appropriate for The John Akridge Company to do the investigation since the sexual harassment allegation was against their employee.

Crowley, supra, 691 A.2d at 1172 (being "subjected to contempt, scorn and other indignities in the workplace" by one's supervisor, in addition to receiving an undeserved negative evaluation and discharge is not "extreme and outrageous" conduct). *Cooke-Seals v. District of Columbia,* 973 F. Supp. 184, 188 (D.D.C. 1997) (stating that plaintiff's allegations of abuse of supervisory power did not rise to "extreme and outrageous" conduct); Nor can we say that Mathis-Salamy's conduct, assuming that she did fabricate the sexual harassment allegations in order to retaliate against him for reporting her security breach, rises to the level of "extreme and outrageous" conduct. *See Kerrigan, supra,* 705 A.2d 624. We agree that the facts in *Kerrigan, supra,* 705 A.2d at 624, are analogous to the facts presented here.

In his brief, Edwards argues that the trial court should have considered the "inherent sensibilities" he faced as an African American male being accused of sexual harassment by a Caucasian woman. Undoubtedly, Edwards is looking to cases in which we have taken into account the particular vulnerabilities of those alleging intentional infliction of emotional distress and their tormentors' awareness of these vulnerabilities. *See Drejza v. Vaccaro,* 650 A.2d 1308, 1312 (D.C. 1994) (rape victim's emotional state when subjected to detective's ridicule, insults, bullying and humiliating remarks one hour after she was attacked, the detective's awareness of her vulnerability, and detective's position of authority with respect to victim must be considered in the "outrageousness calculus"); *Anderson v. Prease,* 445 A.2d 612, 613 (D.C. 1982) (the conduct of a physician, who treated patient for anxiety

and was aware of her history of depression, rose to the level of extreme and outrageous conduct when he cursed at the patient and had her leave his office since physician had reason to know she was peculiarly susceptible to emotional distress). However, there is no indication in the record that Mathis-Salamy was aware that Edwards had any peculiar sensibility emotional distress, *see Drejza*, 650 A.2d at 1313, and we discern no basis to impute such to her based solely on generalized assumption concerning sensitivity of African-American men.

Thus, taking Edwards' allegations as true, we conclude as a matter of law that the alleged conduct on the part of Barton, Akridge and Mathis-Salamy is not so outrageous that it raises a jury question with respect to Edwards' intentional infliction of emotional distress claim. Thus, summary judgment was appropriate.[5]

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[5] Edwards contends that the trial court wrongfully failed to consider his memorandum of material facts in dispute and abused its discretion in requesting that he address them orally to the court. Because there is no showing that the trial court failed to consider the statement of material facts in dispute as presented by Edwards and since we conclude, reviewing the facts in the light most favorable to Edwards, that his claim of intentional infliction of emotional distress does not rise to the level of extreme and outrageous conduct reflected in our case law, we need not reach these procedural issues raised by appellant on appeal or his claim against Barton under the theory of respondeat superior.

So ordered.

FOR THE COURT:

/s/ Garland Pinkston, Jr.
GARLAND PINKSTON, JR.
Clerk of the Court

Copies to:

Hon. Linda D. Turner

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

FREDERICK EDWARDS, Plaintiff, v THEJOHN AKRIDGE COMPANY, et at Defendants.	Civil Action No. 00 ca 003365 Judge Linda Turner Calendar # 11

ORDER

Having considered Defendants Barton Protective Services, Inc. and Frankie Mathis-Salamy's Motion for Summary Judgment, memorandum in support thereof, Plaintiff Frederick Edwards's opposition thereto, and the record in this case, including the arguments of counsel on June 12, 2001

IT IS ORDERED that Defendants Barton Protective Services, Inc. and Frankie Mathis-Salamy's Motion for Summary Judgment is **GRANTED**.

DATED: 6-14 , 2001

/s/ Linda Turner
Judge Linda Turner
Superior Court of the
District of Columbia